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12 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

13 CITY OF SAN JOSE; PEOPLE OF THE
STATE OF CALIFORNIA; GINDIN-R&B
14 COMPANY

15 Plaintiff,

16 vs.

17 MARTIN & ROSANNA ALVAREZ, et al.
18 Defendants.

NO. 1-96-CV-759667

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO MODIFY
THE PERMANENT INJUNCTION
AND FINAL JUDGMENT PURSUANT
TO STIPULATION FILED ON APRIL
11, 1997**

19 **DATE: January 29, 2010**
20 **TIME: 9:00 a.m.**
21 **DEPT: 5**
22 **JUDGE: Hon. Mary Jo Levinger**

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I. INTRODUCTION

In this case, there are two stipulated Permanent Injunctions that apply to 94 subject properties that are fourplexes in the area commonly known as the Santee neighborhood. The parties entered into the stipulated Permanent Injunctions for the purpose of "committing themselves to the general improvement of the Santee neighborhood" and acknowledged that the Injunctions are "not punitive in nature." The Injunctions require, in part, armed security guards patrolling the neighborhood seven days a week, Court-approved professional property management, graffiti removal within 48 hours, habitable living conditions, property maintenance, tenant rules of conduct, written rental agreements, and contain a prohibition against tenant overcrowding.

This Court entered one of the Permanent Injunctions in 1996, which covers 34 of the 94 subject properties. This Court entered the other Permanent Injunction in 1997, which covers the remaining 60 of the 94 subject properties. The 1996 Permanent Injunction is continuing in nature and does not contain a specific Court review date. On the other hand, the 1997 Permanent Injunction contained a former date for the Court to review the Injunction and also stated that the parties can seek a modification thereto. As the former review date approached for the 1997 Permanent Injunction, the property owners of the 60 subject properties and Plaintiff entered into 60 Stipulated Modifications to extend the review date to January 31, 2010. Therein, the parties contemplated that the Court would review the Injunction on or about January 31, 2010, and determine if its terms shall be modified. Plaintiff brings this Motion as contemplated by the parties to modify the terms and conditions of the 1997 Permanent Injunction. Plaintiff seeks to modify the 1997 Injunction so it is continuing in nature, which will conform to the 1996 Injunction and create uniformity among all 94 subject properties.

Plaintiff submits evidence in support of this Motion in the form of Declarations and exhibits from tenants, property owners, the Court-approved security company, members of the San Jose Police Department, a crime statistical analyst, the two Court-approved property managers, a representative of the Santee Action Center, the City Attorney's Office, a tow

1 company, and a Code Enforcement Inspector to show that "the ends of justice will be served"
2 by the requested modification because the Permanent Injunction is desperately needed in
3 the Santee neighborhood.

4 The Injunctions are enforced by the City of San Jose, the City Attorney's Office, the
5 Court-approved security company, and the Court-approved property management
6 companies. The Court-approved security company provides two to four armed guards who
7 patrol the neighborhood seven days a week for eight to twelve hours a day. Their daily
8 security reports show a neighborhood that is severely affected by gangs, drugs, vandalism,
9 and alcohol-related incidents.

10 The injunctions provide a mechanism for Code Enforcement, the City Attorney's
11 Office, and the Court-approved property managers to work together to identify and correct
12 severe substandard housing conditions and tenant overcrowding. Code Enforcement's
13 inspections show cockroach infestation, mold, electrical violations, fire code violations
14 including expired fire extinguishers and inoperable smoke detectors, plumbing violations,
15 deteriorated floors, walls, and ceilings, and defective stoves and refrigerators.

16 The Santee neighborhood is located in Beat Building Block (BBB) 219 and is defined
17 as the four-block area bounded by Carnelian Drive, Crucero Drive, Dubert Lane, and Santee
18 Drive, which includes Tami Lee Drive and McQuesten Drive. When comparing BBB 219 with
19 the other 356 BBBs that make up the entire City of San Jose, it ranks number 16 in total
20 number of reported incidents, and *it is the highest ranking BBB in number of gang-related*
21 *incidents.*

22 The Declarations provided by the tenants describe that the Santee neighborhood is
23 presently suffering from the presence of gangs and illegal activity; that there are severe
24 substandard housing conditions; that the tenants are fearful for their health and safety, their
25 children's health and safety; the health and safety of the neighborhood as a whole; and that
26 continued enforcement of the Permanent Injunctions are desperately needed.

II. STATEMENT OF FACTS

In 1996, this Court entered a Permanent Injunction and Final Judgment Pursuant to Stipulation filed in September, 1996, ("1996 Permanent Injunction") that covers 34 subject properties in the Santee neighborhood.¹ (Ex. E to Plaintiffs' Request for Judicial Notice ("RJN").) The addresses of the 34 Subject Properties are listed in Appendix A hereto. (See also, Map, Ex. G, RJN.)

The 1996 Permanent Injunction is continuing in nature with no specific review date, as stated in Paragraph 25:

Each and all of the requirements for compliance with the terms and provisions of this Permanent Injunction and Final Judgment Pursuant to Stipulation shall be continuing in nature.

(Ex. E, RJN.)

In 1997, this Court entered a Permanent Injunction and Final Judgment Pursuant to Stipulation filed on April 11, 1997 ("1997 Permanent Injunction") that covers 60 subject properties in the Santee neighborhood. (Ex. A, RJN.) The addresses of the 60 Subject Properties are listed in Appendix B hereto.

The 1997 Permanent Injunction states in Paragraph 33:

The Court shall conduct a review of the status, and all terms and conditions, of this Permanent Injunction And Final Judgment Pursuant To Stipulation, three (3) years after the date of entry hereof. The Court shall conduct a further review seven (7) years after the date of entry hereof to determine whether the terms and conditions of this Permanent Injunction And Final Judgment Pursuant To Stipulation shall be dissolved, or extended for an additional three (3)-year period at that time. However, nothing shall prevent any party hereto, or any successor or assign of any party, from seeking modification to or relief from any or all provisions of this Permanent Injunction And Final Judgment Pursuant To Stipulation at any time. Nor shall the plaintiffs be foreclosed from seeking additional provisions or and additional extension.

(Ex. A, RJN.)

On and between October 17, 2003, and September 26, 2007, all of the owners of the 60 subject properties and Plaintiff entered into separate Stipulated Modifications to the 1997

¹ Thirty of these have the file date of September 10, 1996; three have the file date of September 18, 1996, and one has the file date of September 27, 1996. Exhibit E to the Request for Judicial Notice contains the file date of September 10, 1996.

1 Permanent Injunction to extend the review date.² (Ex. B, RJN.) Paragraph 3 of the
2 Stipulated Modifications supersedes Paragraph 33 of the 1997 Permanent Injunction and
3 states:

4 The Court shall conduct a review of the status of the Permanent
5 Injunction as to the Subject Property on or about **January 31, 2010**, to
6 determine whether the terms and conditions of the Permanent Injunction,
7 in whole or in part, shall be extended, modified, or dissolved. This
8 provision supersedes the date set for review in paragraph 33 of the
9 Permanent Injunction. The Permanent Injunction and Modification
thereto shall remain in full force and effect pending said review by the
Court.

9 (Emphasis in original.)

10 Plaintiff moves this Court to modify Paragraph 33 of the 1997 Permanent Injunction to
11 make it continuing in nature with no review date, which would comport to Paragraph 25 of the
12 1996 Permanent Injunction:

13 Each and all of the requirements for compliance with the terms and
14 provisions of this Permanent Injunction and Final Judgment Pursuant to
15 Stipulation shall be continuing in nature. This provision supersedes the
date set for review in Paragraph 33 of the Permanent Injunction.

16 (Ex. E, RJN.)

17 **III. LEGAL ARGUMENT**

18 The 1997 Permanent Injunction states that the parties "execute this Stipulation for the
19 purpose of committing themselves to the general improvement of the Santee neighborhood
20 and they acknowledge that the Stipulation is not punitive in nature." (Ex. A at par. 38, p. 23.)
21 The parties, the City of San Jose, the City Attorney for the City of San Jose, and this Court
22 have devoted countless hours toward the general improvement of the Santee neighborhood
23 by enforcing the permanent injunctions in this case. For these reasons, and in the interest of
24 justice, Plaintiff seeks to modify the 1997 Permanent Injunction.

25 The Stipulated Modifications give the Court the authority to modify its terms and
26 conditions on or about January 31, 2010. (Ex. B, par. 3, RJN.) At the time of entry of the

27 _____
28 ² After the parties entered into the Stipulated Modifications, five of the properties and their
owners entered into Second Stipulated Modifications with Plaintiff. Exhibit B of the Request for
Judicial Notice contains fifty-four Stipulated Modifications and five Second Stipulated Modifications.

1 1997 Permanent Injunction, the parties contemplated that the City Attorney could seek such
2 a modification on or about January 31, 2010.

3 Furthermore, the trial court has the legal authority to modify a permanent injunction
4 and final judgment upon a showing that "the ends of justice would be served by the
5 modification." (Civ. Code, § 3424 and Code Civ. Proc., § 533.) The Code of Civil Procedure
6 codified the "long-settled judicial recognition of the inherent power of the court to amend an
7 injunction in the interest of justice" where "the ends of justice would be served by
8 modification." (*Swan Magnetics, Inc. v. Superior Court* (1997) 56 Cal.App.4th 1504, 1509.)
9 This principle governs even when the judgment that provides the injunctive relief is
10 predicated upon stipulation of the parties. (*Welsch v. Goswick* (1982) 130 Cal.App.3d 398,
11 404-405.)

12 As shown by the Declarations filed in support of this Motion, the Santee neighborhood
13 is benefitting daily from enforcement of the 1997 Permanent Injunction in such areas as
14 armed security, habitability, property management, graffiti removal, education for tenants and
15 property owners, tenant overcrowding, tenant screening, property inspections, parking and
16 towing program, large item garbage removal, and general access to resources. This has
17 resulted in improved health and safety neighborhood conditions for the residents in what was
18 once one of the worst neighborhoods in the City. However, despite the great strides that
19 have been accomplished in the Santee neighborhood since the inception of this case, it
20 remains a place of severe need. The Declarations and their exhibits show that the ends of
21 justice will be served by modifying the Permanent Injunction to be continuing in nature.

22 **A. THE ENDS OF JUSTICE WILL BE SERVED BY MODIFYING THE 1997**
23 **PERMANENT INJUNCTION TO BE CONTINUING IN NATURE.**

24 **1. Armed security guards.**

25 The 1997 Permanent Injunction requires uniformed, armed, professional security
26 officers to provide competent security services at the subject properties. (Ex. A at par. 26,
27 pp. 17-18, RJN.) The Court-approved security company, Admiral Security, provides two to
28 four armed guards, depending on the time of year, who patrol the neighborhood seven days

1 a week for eight to twelve hours a day. (Ahmed Declaration at par. 8.) The armed security
2 guards promote safety among the residents in Santee by responding to daily problems such
3 as: illegally parked vehicles (contact towing company); safety issues (lighting and illegal
4 dumping of garbage on premises); alcohol related issues (drinking and urinating in public);
5 drug activities (sales and use); gang related issues (youths congregating with known gang
6 members, graffiti); curfew violations (minors); deterrence of suspicious activities (loitering by
7 non-residents, vandalism of automobiles and property); fire safety rules; and violations of
8 tenants' rules of conduct. (*Id.* at par. 6.) Security provides daily security reports
9 documenting the incidents it encounters. (*Id.* at par. 10.) The security report documents the
10 guards' interaction with others on site, states whether the San Jose Police Department was
11 called, if a towing company was called, if any items were found, miscellaneous notes, and
12 includes pictures. (*Id.*) The City Attorney's Office prepared a summary of the incidents that
13 were documented in the daily security reports since January 1, 2009, through November 30,
14 2009. (See Ex. B, Wright Decl.)³

15 The daily security reports are provided to the property managers, the Santee Action
16 Center, the City Attorney, the Home Owners' Association, and the self-managed property
17 owners. (*Id.* at par. 8.) Often, the reports supply the legal basis for tenants who commit
18 criminal activity or create neighborhood nuisances to be evicted. (Ogasawara Decl. at par.
19 7.) Also, security's daily reported observations enable property managers and city
20 employees to act quickly to address graffiti removal, broken outdoor lights, maintenance
21 issues, and tenant displacement issues. (*Id.* at par. 8.) The presence of the armed guards
22 also enable detection of criminal activity quickly and result in security calling the San Jose
23 Police. (Ahmed Decl. at par. 8.) The security guards and a supervisor are also able to
24 respond to questions and concerns from those in the Santee network about a particular
25 problem. (Ogasawara Decl. at par. 9.)

26 Armed, professional security services are needed to promote reasonable order,

27 _____
28 ³ Copies of the daily security reports from January 1, 2009, through November 30, 2009, will be
lodged with the Court by the City Attorney for review. These documents are not attached to this
Motion in an abundance of caution to protect the privacy rights of the accused and witnesses.

1 safety, and protection for the residents in the Santee neighborhood. (Ahmed Decl. at par. 9.)
2 Armed security addressed 1,128 total incidents in an 11 month time period, from January 1,
3 2009, through November 30, 2009, that would have either not been addressed, reported,
4 detected or would have added to the workload of the San Jose Police Department if the
5 armed guards were not canvassing the neighborhood seven days a week. (Ex B., Wright's
6 Decl.; Storton Decl. at par. 4.) Without the daily presence of security, the gang and drug
7 activities will almost certainly increase along with drinking and urinating in public, violent
8 crimes, graffiti will be rampant, and parking will be nearly impossible. (Ahmed Decl. at par.
9 9.) Therefore, the ends of justice will be served by modifying the 1997 Permanent Injunction
10 to be continuing in nature. (Civ. Code § 3424 and Code Civ. Proc. § 533.)

11 **2. Crime statistics.**

12 The Crime Analysis Unit defines the distinct geographic areas located within the City
13 of San Jose patrol districts as beat building blocks to facilitate statistical comparisons of
14 defined geographic sections of San Jose. (Fay Decl. at pa. 10.) There are 357 beat building
15 blocks within the City of San Jose. (*Id.*) The Santee neighborhood is located in BBB 219
16 and is defined as the four-block area bounded by Carnelian Drive, Crucero Drive, Dubert
17 Lane, and Santee Drive, which includes Tami Lee Drive and McQuesten Drive. (*Id.*; see also
18 Map, Ex. G, RJN.) When comparing BBB 219 with the other 356 BBBs, it ranks number 16
19 in total number of reported incidents, and *it is the highest ranking BBB in number of gang*
20 *related incidents.* (*Id.* at par. 22.) Although the Santee neighborhood makes up only a small
21 percentage of the total geographic area of BBB 219, it accounts for twenty-one percent
22 (21%) of the total number of reported incidents in BBB 219. (*Id.*) Therefore, the ends of
23 justice will be served by modifying the 1997 Permanent Injunction to be continuing in nature
24 to continue to provide a presence of individuals who report incidents to the police, such as
25 security guards, property managers, and the City Attorney. (Civ. Code, § 3424 and Code
26 Civ. Proc., § 533.)

27 **3. Sub-standard housing and property maintenance.**

28 The 1997 Permanent Injunction requires that property owners "maintain conformity

1 with all applicable laws and regulations concerning the maintenance of their properties” and
2 “ensure that the subject property conforms to minimum standards of habitability.” (Ex. A at
3 par. 4, RJN.) This requirement promotes public safety by addressing problems such as:
4 Cockroach infestation, mold, electrical violations, fire code violations including expired fire
5 extinguishers and inoperable smoke detectors, plumbing violations, deteriorated floors, walls,
6 and ceilings, and defective stoves and refrigerators. (Tran Decl., Ex. A1-A60; summary, Ex
7 A., Wright’s Decl.) As part of this Motion, Plaintiff submits numerous property inspection
8 reports by Code Enforcement Inspector Leo Michael Tran (“Mike Tran”). (See Tran Decl.
9 and Exhibits thereto.) These inspection reports show many San Jose Municipal Code
10 violations at the 60 subject properties that are covered by the 1997 Permanent Injunction.
11 (*Id.*; see summary, Ex A, Wright’s Decl.)

12 The City Attorney reviews substandard housing violations and enforces the injunction
13 with an Order to Show Cause (“OSC”) re Contempt or lesser degrees of enforcement such
14 as an Agreement for Repairs, a letter, phone call or e-mail. The Santee Action Center also
15 discusses the matter with the Court-approved Property Manager and monitors the progress
16 of the repairs. (Ramos Decl. at par. 4.) City Attorney involvement in disputes usually
17 escalates the matter to one of importance that is well-received by the property owners and
18 remedied by the repairs or a reasonable schedule in which the property owners agree to
19 complete the repairs. (Ogasawara at par. 12.)

20 The experience of the Court-approved property manager, Alice Ogasawara, shows
21 that without the requirements of the Permanent Injunctions, the majority of the property
22 owners whose properties she manages would procrastinate in making repairs, if at all, and
23 would not correct violations.⁴ (*Id.*) As a result of the efforts of the Court-approved property
24 managers and the Court-approved security company, the overall appearance of the Santee
25 neighborhood has and continues to improve. (Ogasawara Decl. at par. 13; Denos Decl. at
26 par. 7.) Without the enforcement authority of the Permanent Injunction, the Santee

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28 ⁴ Alice Ogasawara of Realty World Premier Properties manages sixty-four of the total 94
subject properties forty-two of which are controlled by the 1997 Permanent Injunction. (Ogasawara
Decl. at par. 3.)

1 neighborhood would likely quickly revert to being over-run with drugs, gangs, and it is very
2 possible that many of the tenant conditions would revert back to the severe substandard
3 housing conditions that warranted the City's lawsuit that resulted in the Permanent Injunction.
4 (Storton Decl. at par. 4; Ogasawara Decl. at par. 13; Aronica Decl. at par. 10; Denos Decl. at
5 par. 7.) Therefore, the ends of justice will be served by modifying the 1997 Permanent
6 Injunction to be continuing in nature. (Civ. Code, § 3424 and Code Civ. Proc., § 533.)

7 **4. Court-approved property management.**

8 The 1997 Permanent Injunction requires Court-approved property managers to
9 provide property management at the subject properties.⁵ (Ex. A at par. 11, pp. 9-10, RJN.)
10 Property Managers are charged with the following responsibilities which are set forth in
11 Paragraph 20 of the Permanent Injunction: (a) Conduct daily visual inspections of the
12 common areas of the subject property to ensure decent, safe and sanitary living conditions;
13 (b) Conduct visual inspections of the interior portions of each of the rental units at least once
14 every six (6) months to ensure decent, safe, and sanitary living conditions; (c) Notify the
15 property owners of all needed repairs and improvements to the subject property, in writing,
16 within twenty-four (24) hours; (d) Remove all trash and debris from the common areas of the
17 subject property on a daily basis; (e) Take all reasonable necessary steps to ensure that the
18 tenants and visitors at the subject property refrain from conducting any illegal drug related
19 activity or engaging in any other illegal activity at and around the subject property, and
20 otherwise ensure conformity with the provisions of the Permanent Injunction; (f) Take all
21 reasonable necessary steps to ensure that the tenants comply with the terms of the written
22 Rental Agreement and the written "Rules of Conduct;" (g) Report to the property owners, in
23 writing, any and all violations of the written Rental Agreement, the written tenant "Rules of
24 Conduct," and the terms and conditions of the Permanent Injunction, within twenty-four (24)
25 hours; (h) Report to the property owners, in writing, and to the San Jose Police Department,

26
27 ⁵ The Court approved an exception to the required professional property management
28 companies by permitting some property owners to self-manage their properties with Court-approval
and recommendation by the City Attorney. This program provides an incentive for owners to keep
their property in a habitable condition.

1 any and all suspected violations of law by any persons at the subject property; (i) Take no
2 action that would violate the provisions of the Permanent Injunction; (j) Attend monthly
3 Neighborhood Association Meetings; (k) Perform all of the other duties required of the
4 property manager by the property owner; and (l) Document and report to the property owners
5 problems in the fourplex units that come to the attention of the property manager. (Ex. A,
6 par. 20, at pp. 14 – 15, RJN.)

7 The Court-approved property managers promote public health and safety by
8 addressing daily problems such as: gang and drug activity; graffiti; overflowing garbage,
9 recyclable bins, and illegal dumping of mattresses and other large items of blight; residential
10 outdoor lighting and street lights vandalized so the outside area is dark to inhibit illegal
11 activity; expired fire extinguishers and inoperable smoke detectors with missing batteries;
12 dead landscaping and inoperable lawn sprinklers; cockroach and rodent infestation inside
13 fourplexes, and maggots near overflowing garbage dumpsters; mold inside fourplexes and
14 inoperable refrigerators and stoves; tenant overcrowding; evicted tenants trying to live in
15 another building in the neighborhood and coming to visit other tenants; displaced tenants
16 after a fire, foreclosure, utility shutoff; violations of parking and towing rules; angry tenants at
17 meetings requesting that their issues be listened to and remedied; angry property owners at
18 meetings requesting that their issues be listened to and remedied; language barriers; and the
19 need for education of tenants and property owners. (Ogasawara Decl. at par. 10.)

20 Without the requirement of property management, the Santee Neighborhood would
21 likely quickly revert to being over-run with drugs, gangs, and tenants living with many severe
22 substandard housing conditions. (Ogasawara Decl. at par. 13; Aronica at par. 10.) Court-
23 approved property management is needed to promote habitable living conditions, safety, and
24 protection for the residents and property owners in the Santee neighborhood. (Aronica Decl.
25 at par. 10.) Without the daily presence of property management, tenant overcrowding will
26 likely increase; tenant screening would most likely not exist; and upkeep and repairs of the
27 properties, landscaping, and buildings would likely be less, including fire extinguisher and
28 smoke detector maintenance. (*Id.*) Therefore, the ends of justice will be served by modifying

1 the 1997 Permanent Injunction to be continuing in nature. (Civ. Code, § 3424 and Code Civ.
2 Proc., § 533.)

3 **5. Tenants in Santee.**

4 The 94 subject properties are made up of fourplexes. (Tran Decl.) At least 150
5 tenants live in the 94 subject properties that are the subject of the stipulated Permanent
6 Injunctions. (Ramos Decl. at par. 5.) Tenant overcrowding has been a long-standing
7 problem in the Santee neighborhood. (*Id.*) Plaintiff submits 10 declarations from tenants
8 who live on each street in the Santee neighborhood that is covered by the Injunctions. (See,
9 Declarations of Teresa Varela, Miriam Lopez, Diego Rodriguez, Leticia Mayo, Sandra
10 Aguirre, Dung Vu, Maria Muniz, Jose Delgado, and Belen Campos.)⁶ The last page of each
11 declaration is the English translation. These declarations demonstrate that the Santee
12 neighborhood is presently suffering from the presence of gangs and illegal activity; that there
13 are severe substandard housing conditions; that the tenants are fearful for their health and
14 safety; their children's health and safety; the health and safety of the neighborhood as a
15 whole; and that continued enforcement of the Permanent Injunctions is desperately needed.

16 Some examples of issues regarding tenant health and safety in Santee are:
17 substandard housing conditions, fear of gang members and criminal activity, reports of
18 criminal activity, parking rules and towing issues, foreclosures, pest extermination issues,
19 overcrowding, sewage, loss of security deposits, and cleanliness. (Ramos Decl. at *passim*.)
20 There are regular meetings held to address tenants' concerns. (Ramos Decl. at par. 13;
21 Johnson Decl. at par. 6.) Tenants are provided with emergency telephone numbers on
22 magnets for easy reference. (Ogasawara Decl. at par. 8.) Tenants are provided with
23 information to help them combat the problems that plague the neighborhood. (Ramos Decl.
24 at par. 13.)

25 Without the requirements of the Permanent Injunction the property owners may fail to
26 enforce a parking permit program for the neighborhood and may fail to enforce parking rules

27
28 ⁶ All of these tenants live at the subject properties that are covered by the 1997 Permanent
Injunction. (See Declarations and *compare* to Appendix B hereto.)

1 and regulations. (Denos Decl. at par. 8.) This would lead to the tenants, many of them
2 families with young children, to suffer from the lack of parking spaces within a reasonable
3 distance of where they live. (*Id.*) Also, many of the problems that previously plagued the
4 Santee neighborhood would likely return, such as rampant parking in fire lanes, abandoned
5 or inoperable vehicles parked, no available parking for tenants, and overcrowding of cars at
6 or near parking spaces. (*Id.*)

7 All of these examples and testimonials show that the tenants in Santee are in
8 desperate need for continued enforcement of the 1997 Permanent Injunction. Therefore, the
9 ends of justice will be served by modifying the 1997 Permanent Injunction to be continuing in
10 nature. (Civ. Code, § 3424 and Code Civ. Proc., § 533.)

11 **6. Property owners in Santee.**

12 As stated above, the parties entered into the stipulated Permanent Injunctions for the
13 purpose of “committing themselves to the general improvement of the Santee neighborhood”
14 and acknowledged that the Injunctions are “not punitive in nature.” (Ex. A, at par. 38, p. 23.)
15 Plaintiff submits declarations from property owners under the 1997 Permanent Injunction.
16 (Cheng Decl.; Gonzalez Decl. and Cabrera Decl.) The Permanent Injunction promotes the
17 general improvement of the Santee Neighborhood by requiring property owners to keep their
18 properties in good repair which, the witnesses state, they would not do otherwise. (Cheng
19 Decl. at par. 5; Ogasawara Decl. at par. 12.) According to these property owners, the 1997
20 Permanent Injunction promotes public health and safety, and it should continue in full force
21 and effect. (Cheng Decl. at par. 5; Gonzalez Decl. at par. 6; Cabrera Decl. at par. 4.)
22 Further, it enhances the neighborhood, which in turn protects the property owners’
23 investment in the property. (*Id.*)

24 Property owners are provided with Code Enforcement’s report of violations and
25 corresponding photographs explaining the violations to them. (Tran Decl. Exs. A1 – A60.)
26 The City Attorney’s Office (and the Court) considers mitigating and aggravating factors when
27 deciding how best to correct the violations and monitor the progress of the repairs. The
28 Permanent Injunction also helps property owners screen tenants and keep out undesirables

1 or formerly evicted tenants. (Ogasawara Decl. at par. 7.) The Court-approved security
2 company and Court-approved property managers communicate with the property owners
3 when their properties are listed in the daily security reports. (Ogasawara Decl. at par. 7;
4 Aronica Decl. at par. 7; Ahmed at par. 7 and 8.) Property managers, the City Attorney, and
5 the Santee Action Center provide information to property owners such as: free landlord
6 classes; Tri-County Association membership for landlords; obtaining City permits for repairs;
7 requirements of the fire, building, and San Jose Municipal Codes; maintenance of current
8 Penal Code section 602(o), formerly 602(n), authorizations for each property owner to enable
9 the San Jose Police Department to remove trespassers from private property; City business
10 licenses to be a landlord in the City of San Jose; and Occupancy Permits to have tenants in
11 the City of San Jose. (Ogasawara Decl. at par. 9; Johnson Decl. at par. 5.)

12 All of these examples show that the property owners in Santee are also in need for the
13 enforcement of the 1997 Permanent Injunction. Therefore, the ends of justice will be served
14 by modifying the 1997 Permanent Injunction to be continuing in nature. (Civ. Code, § 3424
15 and Code Civ. Proc., § 533.)

16 **B. THE STATUS QUO IS MAINTAINED PENDING THE REVIEW BY THE COURT OF**
17 **THIS MOTION TO MODIFY THE 1997 PERMANENT INJUNCTION.**

18 All of the Stipulated Modifications regarding the 60 subject properties covered by the
19 1997 Permanent Injunction state that “[t]he Permanent Injunction and Modification thereto
20 shall remain in full force and effect pending said review by the Court.” (Ex. B at par. 3, RJN.)
21 Therefore, the 1997 Permanent Injunction will remain in full force and effect pending the
22 review by this Court of the Motion to Modify the 1997 Permanent Injunction.

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IV. CONCLUSION

For the foregoing reasons, the ends of justice are served by this Court modifying the 1997 Permanent Injunction to be continuing in nature.

Dated: December 23, 2009

RICHARD BOYLE, City Attorney

By 

DAISY M. NISHIGAYA

Deputy City Attorney

Attorneys for Plaintiff CITY OF SAN JOSE
and PEOPLE OF THE STATE OF
CALIFORNIA

APPENDIX A

(The 34 Properties covered by the 1996 Permanent Injunction)

1321 Carmelian Drive, San Jose, CA 95122
1322 Carmelian Drive, San Jose, CA 95122
1329 Carmelian Drive, San Jose, CA 95122
1380 Carmelian Drive, San Jose, CA 95122
1388 Carmelian Drive, San Jose, CA 95122
1423 Carmelian Drive, San Jose, CA 95122
1424 Carmelian Drive, San Jose, CA 95122
1435 Carmelian Drive, San Jose, CA 95122

1323 Crucero Drive, San Jose, CA 95122
1338 Crucero Drive, San Jose, CA 95122
1344 Crucero Drive, San Jose, CA 95122
1566 Crucero Drive, San Jose, CA 95122
1582 Crucero Drive, San Jose, CA 95122
1588 Crucero Drive, San Jose, CA 95122
1652 Crucero Drive, San Jose, CA 95122

1376 Dubert Lane, San Jose, CA 95122
1393 Dubert Lane, San Jose, CA 95122
1416 Dubert Lane, San Jose, CA 95122
1425 Dubert Lane, San Jose, CA 95122
1433 Dubert Lane, San Jose, CA 95122
1448 Dubert Lane, San Jose, CA 95122

1367 Tami Lee Drive, San Jose, CA 95122
1368 Tami Lee Drive, San Jose, CA 95122
1376 Tami Lee Drive, San Jose, CA 95122
1382 Tami Lee Drive, San Jose, CA 95122
1422 Tami Lee Drive, San Jose, CA 95122
1423 Tami Lee Drive, San Jose, CA 95122
1415 Tami Lee Drive, San Jose, CA 95122
1430 Tami Lee Drive, San Jose, CA 95122
1447 Tami Lee Drive, San Jose, CA 95122

1628 Crucero Drive, San Jose, CA 95122

1392 Dubert: Lane, San Jose, CA 95122
1432 Dubert Lane, San Jose, CA 95122

1377 Dubert Lane, San Jose, CA 95122

Appendix A

APPENDIX B

(The 60 Properties covered by the 1997 Permanent Injunction)

1330 Carnelian Drive, San Jose, CA 95122
1339 Carnelian Drive, San Jose, CA 95122
1340 Carnelian Drive, San Jose, CA 95122
1351 Carnelian Drive, San Jose, CA 95122
1352 Carnelian Drive, San Jose, CA 95122
1359 Carnelian Drive, San Jose, CA 95122
1360 Carnelian Drive, San Jose, CA 95122
1371 Carnelian Drive, San Jose, CA 95122
1372 Carnelian Drive, San Jose, CA 95122
1379 Carnelian Drive, San Jose, CA 95122
1387 Carnelian Drive, San Jose, CA 95122
1404 Carnelian Drive, San Jose, CA 95122
1405 Carnelian Drive, San Jose, CA 95122
1411 Carnelian Drive, San Jose, CA 95122
1412 Carnelian Drive, San Jose, CA 95122
1436 Carnelian Drive, San Jose, CA 95122

1324 Crucero Drive, San Jose, CA 95122
1328 Crucero Drive, San Jose, CA 95122
1332 Crucero Drive, San Jose, CA 95122
1334 Crucero Drive, San Jose, CA 95122
1339 Crucero Drive, San Jose, CA 95122
1550 Crucero Drive, San Jose, CA 95122
1558 Crucero Drive, San Jose, CA 95122
1574 Crucero Drive, San Jose, CA 95122
1594 Crucero Drive, San Jose, CA 95122
1604 Crucero Drive, San Jose, CA 95122
1612 Crucero Drive, San Jose, CA 95122
1620 Crucero Drive, San Jose, CA 95122
1640 Crucero Drive, San Jose, CA 95122

1352 Dubert Lane, San Jose, CA 95122
1353 Dubert Lane, San Jose, CA 95122
1360 Dubert Lane, San Jose, CA 95122
1368 Dubert Lane, San Jose, CA 95122
1369 Dubert Lane, San Jose, CA 95122
1384 Dubert Lane, San Jose, CA 95122
1385 Dubert Lane, San Jose, CA 95122
1400 Dubert Lane, San Jose, CA 95122
1401 Dubert Lane, San Jose, CA 95122
1408 Dubert Lane, San Jose, CA 95122
1409 Dubert Lane, San Jose, CA 95122

Appendix B

1 1417 Dubert Lane, San Jose, CA 95122
1424 Dubert Lane, San Jose, CA 95122
2 1441 Dubert Lane, San Jose, CA 95122
1449 Dubert Lane, San Jose, CA 95122
3
4 1328 Santee Drive, San Jose, CA 95122
1338 Santee Drive, San Jose, CA 95122
5
6 1351 Tami Lee Drive, San Jose, CA 95122
1359 Tami Lee Drive, San Jose, CA 95122
7 1360 Tami Lee Drive, San Jose, CA 95122
1375 Tami Lee Drive, San Jose, CA 95122
8 1383 Tami Lee Drive, San Jose, CA 95122
1391 Tami Lee Drive, San Jose, CA 95122
9 1398 Tami Lee Drive, San Jose, CA 95122
1399 Tami Lee Drive, San Jose, CA 95122
10 1406 Tami Lee Drive, San Jose, CA 95122
1407 Tami Lee Drive, San Jose, CA 95122
11 1414 Tami Lee Drive, San Jose, CA 95122
12 1431 Tami Lee Drive, San Jose, CA 95122
13 1438 Tami Lee Drive, San Jose, CA 95122
1439 Tami Lee Drive, San Jose, CA 95122
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Appendix B